2373

SUPREME COURT OF THE UNITED STATES.

No. 129.

HUMPHREY H. LEAVITT, APP'T,

vs.

PHILIP M. GRIM, ADM'R OF JOSHUA LOGAN, DEC'D, AND AL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE WESTERN DISTRICT OF PENSYLVANIA.

INDEX.

	Original.	Print.
Bill of complaint	2	1
Interrogatories annexed to bill	10	4
Exhibit A, " " "	11	4
Subpœna	15	6
Answer of Philip M. Grim	16	7
Exhibit A, referred to in answer	26	10
Disclaimer of Sabina Logan	30	12
Answer of John B. Blaine and wife et al	32	13
Exhibit A, referred to in answer of Blaine et al	42	17
Replication to answers	46	18
Opinion of court	48	19
Decree	49	20
Appeal prayed and allowed	50	20
Clerk's certificate	50	20

Gideon, Print.

Among the rolls, records and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania, in the third circuit, may be found the following words and figures, viz:

No. 2 of November term, 1855.—In Chancery.

HUMPHREY L. LEVITT, a citizen of the State of Ohio, vs. PHILIP L. GRIM, administrator of the estate of Joshua Logan, deceased, Sabina Logan, John R. Blain, and Julia, his wife, Thomas Allison, and Emily, his wife, Louisa Logan, David Logan, and Henry Logan, minor children of Joshua Logan, deceased, and Wm. D. Johnston, guardian of Louisia and David Logan, and the Pittsburg Loan and Building Association, citizens of the State of Penn.	C. Shaler & Co., and W. Bakewell. Courtney, Leslie & Williams, for the widow and heirs of Logan; Fetterman for P. L. Grim, admin.

Be it remembered, that heretofore, to wit, on the 13th day of July, A. D. 1855, comes the complainant, by his counsel, and files the following bill of complaint:

Copy of Bill.

In the Circuit Court of the United States.

UNITED STATES OF AMERICA, *ss.*

Western District of Pennsylvania.

HUMPHREY H. LEAVITT, a citizen of the State of Ohio, vs. PHILIP L. GRIM, administrator of Joshua Logan, deceased, Sabina Logan, John R. Blaine, and Julia, his wife, Thomas Allison, and Emily, his wife, Louisa Logan, David Logan, and Henry Logan, minor children of Joshua Logan, deceased, and William D. Johnson, guardian of Louisa and David Logan, and the Pittsburg Loan and Building Association, citizens of the State of Pennsylvania.	Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States, within and for the western district of Pennsylvania:

The bill of complaint of Humphrey H. Leavitt, a citizen and resident of the State of Ohio, against Philip L. Grim, a citizen of the State of Pennsylvania, who is administrator of Joshua Logan, deceased, who was also at the time of his death a citizen of said State, and Sabina Logan, John R. Blaine, and Julia, his wife, Thomas Allison, and Emily, his wife, Louisa Logan, Henry Logan, David Logan, and William D. Johnson, guardian of David Logan, Henry Logan, and Louisa Logan, all of the above named persons being citizens and residents of Pennsylvania, and against the Pittsburg Loan and Building Association, also a citizen of said State, being a corporation created by the State of Pennsylvania, and having its principal office and place of business within said State, represents:

I. That on the 15th day of December, 1853, one Joshua Logan, deceased, late of Beaver county, Pennsylvania, applied to your complainant, at Steubenville, in Jefferson county, Ohio, for a loan of three thousand dollars, to be secured by mortgage upon the following described premises, of which he, the said Joshua Logan, then and there represented himself to be seized in fee simple, to wit: The following described real estate, lying and being in the city of Pittsburg, in said State of Pennsylvania, and known and described as follows, to wit: all that certain lot of ground marked and numbered in the general plan of said city as one hundred and seventy-eight, bounded northeastwardly by lot numbered one hundred and fifty-seven, southeastwardly by lot numbered one hundred and seventy-seven, southwestwardly by Water street, and northwestwardly by Ferry street, containing in front on Water street thirty-five feet, and in depth on Ferry street eighty feet, more or less. Also part of lot numbered one hundred and fifty-seven, in said city, bounded as follows, to wit: beginning on Ferry street, at the northwest corner of lot numbered one hundred and seventy-eight, and running by said lot eastwardly and parallel with the line of Water street thirty-five feet; thence by lot numbered one hundred and fifty-eight northwardly, parallel with Ferry street eighteen feet; thence westwardly, parallel with Front street thirty-five feet to Ferry street; and thence by the same southwardly eighteen feet to the place of beginning.

II. That your complainant did then and there loan and advance to the said Joshua Logan the said sum of three thousand dollars, at the rate of ten per cent. per annum interest, that rate then and there being allowed and sanctioned by the laws of the State of Ohio, taking his promissory note therefor, as described in the mortgage hereinafter mentioned.

III. That to secure the payment of the said sum of money so loaned and advanced to him by your complainant, he, the said

Joshua Logan, then and there made, executed and acknowledged, and delivered unto your complainant, a deed of mortgage upon the premises hereinbefore described, a copy of which mortgage is herewith filed and made part of this bill, marked "A."

IV. That afterwards, and while the said sum of money remained unpaid, to wit, on or about the day of , the said Joshua Logan departed this life intestate, leaving as his widow Silena Logan, of Beaver county, in the State of Pennsylvania, who is made defendant hereto, and as his children and heirs-at-law, Julia, intermarried with John R. Blaine, Emily, intermarried with Thomas Allison, and Louisa Logan, and David Logan, and Henry Logan, who are minors, and for whom William D. Johnson has been appointed and is guardian; all of which persons above named reside in Beaver county, Pennsylvania, and are made defendants hereto.

V. Your complainant further represents, that the said sum of money specified in said mortgage is due and unpaid, and the condition of said mortgage hath become forfeited, and your complainant had well hoped that the said defendants would have paid the same when it became due, and redeemed the said mortgage according to the tenor and condition thereof.

VI. But although the said sum of money in said mortgage specified, and intended to be secured thereby, hath long since become due and payable, and although your complainant hath often requested the said defendants to pay the same, yet they have hitherto wholly refused, and still do refuse, to pay the same, or any part thereof. And the said defendants pretend, and give out in speeches, that the said Joshua Logan was not seized in fee simple of said lands and premises described in said mortgage, nor any part thereof, but only had a life estate therein, and that upon his death all estate, right, title, claim and interest of your complainant, under or by virtue of said mortgage, ceased and terminated, and that the title and estate in and to said premises is now vested in the children and heirs-at-law of the said Joshua Logan, deceased, free, clear, and discharged of all in cumbrance of said mortgage, or otherwise, and that they are in nowise bound to redeem said mortgage, or pay the said debt to your complainant.

VII. Your complainant further represents that the Pittsburg Loan and Building Association, a corporation created by authority of the State of Pennsylvania, which is also made defendant hereto, have or claim to have some estate, right, title or interest in, or incumbrance upon said premises, in your complainant's mortgage described by a junior mortgage, for one thousand dollars, dated the tenth day of July, 1854, and by means thereof have an equity of redemption in said premises.

VIII. In consideration whereof, and inasmuch as your complainant is without plain and adequate remedy at law, may it

please your honors to grant your writ of supœna against the said Philip L. Grim, administrator of Joshua Logan, deceased, and said Sabina Logan, John R. Blaine, and Julia, his wife; Thomas Allison, and Emily, his wife; Louisa Logan, David Logan, and Henry Logan, and William D. Johnson, guardian of David and Henry Logan, and against the said Pittsburg Loan and Building Association, that they may answer the premises, and show cause, if any, they or either of them have, why the equity of redemption in said mortgaged premises should not be foreclosed and the said premises sold and conveyed in fee simple, by order of this court, to pay, satisfy and secure the mortgage debt due to your complainant; and that your complainant may have such other and further relief as the nature of the case and equity and good conscience may require, &c.

C. SHALER & Co. & W. BAKEWELL,
Solicitors for Cmplainants.

The defendants are required specially to answer the following interrogatories, from 1 to 5 inclusive:

1. Whether the said Joshua Logan was not on the 15th of December, 1853, in possession of the premises herein before described?

2. Whether he did not make, execute, and deliver to complainant the mortgage deed herein before described, and whether the copy filed herewith is not a true copy?

3. Whether the debt specified in said mortgage is not due and unpaid?

4. Whether the persons named in the foregoing bill as such, are not the administrators, widow, children, and heirs-at-law of Joshua Logan, deceased?

5. What interest, title or estate, the said Joshua Logan had in said mortgaged premises, at the date of said mortgage to complainant, and at the date of his death, and what estate, title or interest the defendants respectively have therein?

C. SHALER & Co. & W. BAKEWELL,
Sol'rs for Complainant.

Exhibit A.

Know all men by these presents, that I, Joshua Logan, of the county of Beaver, in the State of Pennsylvania, for and in consideration of the sum of three thousand dollars, to me paid by Humphrey H. Leavitt, of the county of Jefferson, in the State of Ohio, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said Humphrey H. Leavitt, his heirs and assigns, the following described real estate, lying and being in the city of Pittsburg, in said State of Pennsylvania, and known and described as follows, to wit: all that certain lot of ground marked and numbered in the general plan of said city as one hundred and seventy-

eight, bounded northeastwardly by lot numbered one hundred and fifty-seven; southeastwardly by lot numbered one hundred and seventy-seven; southwestwardly by Water street; and northwestwardly by Ferry street; containing in front on Water street thirty-five feet, and in depth on Ferry street eighty feet, more or less; also part of lot numbered one hundred *one hundred* and fifty-seven, in said city, bounded as follows, to wit: beginning on Ferry street at the northwest corner of lot numbered one hundred and seventy-eight, and running by said lot eastwardly, and parallel with the line of Water street, thirty-five feet; thence by lot numbered one hundred and fifty-eight northwardly, parallel with Ferry street, eighteen feet; thence westwardly, parallel with Front street, thirty-five feet to Ferry street; and thence by the same southwardly eighteen feet to the place of beginning: to have and to hold the said lots or parcels of land, with all the privileges and appurtenances thereto belonging, to him; the said Humphrey H. Leavitt, his heirs and assigns, forever: Provided, however, and these presents are upon this condition, that whereas the said Logan has executed his promissory note for three thousand dollars, of the same date herewith, payable to the said Leavitt or order six months from the date thereof, with interest from date at the rate of ten per cent. per annum; which note was executed at the town of Steubenville, in said Jefferson county:

Now, if the said Logan, his heirs, executors, or administrators, shall well and faithfully pay to the said Leavitt, or his order or assigns, the said sum of three thousand dollars, with the interest thereon, according to the terms of said note, or if the time for such payment should be extended by said Leavitt beyond the said six months, then at such time as may be so extended, and shall also, until said note shall be fully paid and satisfied, keep the buildings on the lots before described well and safely insured, then this deed shall be null and void; otherwise to continue in full force and virtue.

In witness whereof, I have hereunto set my hand and seal, at Steubenville aforesaid, this fifteenth day of December, one thousand eight hundred and fifty-three.

JOSHUA LOGAN. [SEAL.]

Signed, sealed, and delivered in presence of—
M. G. DOYLE,
JOHN BRAY.

STATE OF OHIO, *Jefferson County, ss.*

On this 15th day of December, one thousand eight hundred and fifty-three, before the subscriber, a justice of the peace within and for said county, personally appeared the above named Joshua Logan, who has signed the foregoing deed, and acknowledged the signing and sealing thereof to be his free and voluntary act for the purposes therein expressed.

Given under my hand and seal the day and year aforesaid.

JOHN BRAY, [SEAL.]
Justice of the Peace.

Whereupon the following subpœna was issued and served:

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss.

The President of the United States to Philip L. Grim, administrator of Joshua Logan, deceased, Sabina Logan, John R. Blaine, and Julia his wife, Thomas Allison, and Emily his wife, Louisa Logan, David Logan and Henry Logan, minor children of Joshua Logan, deceased, and William D. Johnson, guardian of Louisa and David Logan, and the Pittsburg Loan and Building Association, citizens of the State of Pennsylvania:

For certain causes offered before the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, in the bill in equity of Humphrey H. Leavitt, a citizen of the State of Ohio, we command and strictly enjoin you, and each of you, that laying aside all other matters, and notwithstanding any excuse, you personally be and appear before the judge of the said court, at a session of the same court to be holden at Pittsburg, on the first Monday of August next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And this you are in nowise to omit under the penalty of ten thousand dollars.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Pittsburg, this [SEAL.] 13th day of July, A. D. 1855, and of the independence of the United States the 80th.

H. SPROUL, *Clerk.*

The defendants are required to enter appearance in this suit on or before the return day of this writ, otherwise the bill may be taken pro confesso.

And afterwards, to wit, September 3d, 1855, comes the defendant, Philip L. Grim, by his counsel, and files the following answer:

2377
7

In the Circuit Court of the United States.

UNITED STATES OF AMERICA,
Western District of Pennsylvania.

HUMPHREY H. LEAVITT, a citizen of the State of Ohio,
vs.
PHILIP L. GRIM, administrator of Joshua Logan, deceased, Sabina Logan, John R. Blaine, and Julia, his wife, Thomas Allison, and Emily, his wife, Louisa Logan and David Logan, and Henry Logan, minor children of Joshua Logan, deceased, and William D. Johnston, guardian of Louisa and David Logan, and the Pittsburg Loan and Building Association, citizens of the State of Pennsylvania. } Bill in Equity.

To the Hon. the Judges of the Circuit Court of the United States for the western district of Pennsylvania:

The separate answer of Philip L. Grim, a citizen of Beaver county, in the State of Pennsylvania, who is acting administrator of Joshua Logan, deceased, who was also, at the time of his death, a citizen of the said county of Beaver and State of Pennsylvania, one of the defendants to the bill of complaint of Humphrey H. Lavitt, a citizen and resident of the State of Ohio, compainant.

The respondent now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this respondent is advised is or are material or necessary for him to make answer unto, this respondent, answering, saith:

I. That he is informed, and believes it to be true, that Joshua Logan, the intestate, of whose estate this respondent is the acting administrator, did apply to the complainant, at Steubenville, Jefferson county, Ohio, for a loan of three thousand dollars, to be secured by a mortgage on the premises described in complainant's bill of complaint, as charged in said bill.

But as to whether he represented himself to be seized thereof in fee simple or otherwise, this respondent cannot say, having no knowledge or information on the subject.

II. And this respondent, further answering, saith: That he is likewise informed, and believes it to be true, that complainant did then and there loan and advance to the said Joshua Logan the said sum of three thousand dollars, at the rate of ten per cent. per annum interest, and took his promissory note therefor, as described in the

mortgage mentioned in said bill of complaint, as charged in said bill of complaint.

III. And this respondent, further answering, saith: That he is likewise informed, and believes it to be true, that to secure the payment of the said sum of money so loaned and advanced, the said Joshua Logan then and there made and executed and acknowledged unto complainant a deed of mortgage upon the premises described in said bill, as charged in said bill of complaint.

IV. And this respondent, further answering, saith: That he is likewise informed, and believes it to be true, that while the said sum of money remained unpaid, the said Joshua Logan died intestate, leaving as his widow Sabina Logan, of Beaver county, in the State of Pennsylvania, and as his children and heirs-at-law, Julia L., intermarried with John R. Blaine, Emily, intermarried with Thomas Allison, Louisa Logan, David Logan and Henry Logan, all of Beaver county, in the State of Pennsylvania; the said David and Henry Logan being minors, and for whom William D. Johnson has been appointed and is guardian, who also resides in Beaver county, in the State of Pennsylvania; but that it is not true that the said Louisa Logan is now, or was at the death of the said Joshua Logan, a minor, as charged in said bill of complaint.

V. And this respondent, further answering, saith: That he is informed, and believes it also to be true, that the said sum of money specified in said mortgage is due and unpaid, and that the condition of said mortgage hath become forfeited, as alleged in said bill of complaint.

VI. And this respondent, further answering, saith: That he is likewise informed, and believes it to be true, that in and by the last will and testament of David Logan, late of Allegheny county, in the State of Pennsylvania, deceased, father of the said Joshua Logan, and the grandfather of the said Julia L., Emily, Louisa, David and Henry, children of the said Joshua Logan, dated the twenty-seventh day of March, anno Domini eighteen hundred and fifty, duly probated and registered in the register's office, in said county of Allegheny, in will book , vol. , page , on the day of anno Domini eighteen hundred and thirty-one, a copy of which will is herewith filed and made part of this answer, and marked "A," it was willed and devised, inter alia, as follows, viz:

"I devise to my wife, Julia Logan, for her maintenance and support, the house and lot at the corner of Ferry and Water streets, bought of Mr. Finlay, during her life, and at her death to become the property of Joshua Logan; the said property not to be subject to sale or mortgage, but to descend to his children free and unincumbered. But in case he has no children living at his death, then and in that case to become the property of my daughter, Julia

Richardson, in fee simple, or of her heirs in case she be not then living."

That your respondent has been informed, and believes it to be true, that at the date of the said will, and at the death of the said testator, David Logan, there were then born two of the said Joshua's children, namely, the said Julia L. and the said Emily; and that afterwards the other three children, namely, the said Louisa, David, and Henry, were born.

VII. And this respondent, further answering, saith: That he is likewise informed, and believes it to be true, that the Pittsburg Building and Loan Association, a corporation created by authority of the State of Pennsylvania, have, or claim to have, some estate, right, title, interest in, or incumbrance upon, the premises described in said mortgage, by a junior mortgage for one thousand dollars, dated the tenth day of July, anno Domini eighteen hundred and fifty-four, and by means thereof claim to have an equity of redemption in said premises, as alleged in said bill of complaint.

And the respondent, further answering to the several specific interrogatories of complainant, whereto he is required specially to answer, saith:

1st. To the first interrogatory he saith: That he is informed, and believes it to be true, that the said Joshua Logan was on the 15th day of December, A. D. 1853, in possession of the premises described in the mortgage hereinbefore referred to.

2d. To the second interrogatory he saith: That he is informed, and believes it to be true, that the said Joshua Logan did make, execute, and deliver to the said complainant the mortgage deed described in said bill of complaint; and that the copy of said mortgage deed filed with the said bill of complaint is a true copy.

3d. To the third interrogatory he saith: That he is informed, and believes it to be true, that the debt specified in said mortgage deed is due and unpaid.

4th. To the fourth interrogatory he saith: That the persons named in said bill of complaint are the administrator, widow, children, and heirs-at-law of Joshua Logan, deceased.

5th. To the fifth interrogatory he saith: That the interest, title, or estate which the said Joshua Logan had in said mortgaged premises at the date of said mortgage, he is advised and believes, depended upon the provisions of the said last will and testament of David Logan, late of Allegheny county, Pennsylvania, deceased, hereinbefore recited, said David Logan being the father of said Joshua Logan; that he is advised and believes that a serious question exists in relation to the nature, character, and extent of the estate vested in said Joshua Logan in virtue of the provisions of said will, dependant upon the solution of subtle and difficult legal propositions now pending before the supreme court of Pennsyl-

vania, on an appeal from the decision of the orphans' court of Allegheny county. But the respondent, not claiming to be a lawyer, respectfully prays, in the present glorious uncertainty of the law, to be excused from declaring what title said Joshua Logan actually derived from said will, or hazarding an opinion upon that important question. That the title which said Joshua Logan had at the time of his death, he is advised and believes, depends upon the provisions of said will and certain proceedings had for the purpose of barring a supposed entail; and that the title of said defendants, he supposes, depends upon the same questions.

This respondent, cheerfully submitting to the court the determination of the questions aforesaid, having fully answered, prays to be here dismissed, with payment to him of his costs.

GILBERT L. B. FETTERMAN,
Solicitor for Philip L. Grim, Acting Administrator of Joshua Logan, deceased.

CIRCUIT COURT OF THE UNITED STATES,
Western District of Pennsylvania, ss.

Personally appeared before me, the undersigned authority, Philip L. Grim, administrator of Joshua Logan, deceased, who being by me duly sworn, did depose and say, that the facts contained in the foregoing answer by him subscribed are, so far as stated as of his own knowledge, true; and, so far as stated from information and belief, he believes them true.

PHILIP L. GRIM.

Sworn and subscribed before me, this 3d day of September, A. A. 1855.

R. BIDDLE ROBERTS,
U. S. Commissioner N. D. of Pa.

Exhibit "A."

Copy of the Will of David Logan.

Being desirous that my affairs after my decease be regulated, I make this my last will and testament, hereby revoking and cancelling all former wills by me heretofore at any time made:

After my funeral expenses and just debts are paid, I devise to my wife Julia Logan, for her maintenance and support, the house and lot at the corner of Ferry and Water streets, bought of Mr. Findlay, during her life, and at her decease to become the property of Joshua Logan, the said property not to be subject to sale or mortgage, but to descend to his children free and unincumbered; but in case he has no children living at his death, then and in that case to become the property of my daughter, Julia Richardson, in fee simple, or of her heirs in case she be not then living.

I devise to my daughter, Julia Richardson, the three houses on

First street, and the two houses and office on Water street, and lot formerly belonging to Joseph H. Chapin and Harriet his wife, for her sole and separate use, not subject to the control of any husband she may have, but at her decease to descend in fee simple to such of her children as she may direct, in a writing signed by herself; the said property not to be subject to sale or mortgage during her life.

I give to my grand-daughter, Julia Logan, five shares of one hundred dollars each in the water loan of Pittsburg; the said shares to remain as at present; but if paid, the amount to be placed in bank until she is of age.

I give to my grand-daughter, Jane Richardson, also five shares in the said water loan.

And to my daughter, Julia Richardson, I give also five shares in said water loan, for her sole and separate use, to be disposed of as she may think proper.

I give unto my son, Joshua Logan, the lot in Bucksville, Kentucky, to hold in fee simple.

I devise that any money that I may have at my decease in bank, and debts when collected, may be divided equally between my wife Julia Logan and daughter, Julia Richardson; but, as before mentioned, for Julia Richardson's own use and control.

I give to James Caughey thirty dollars per year, for and during his life, to be paid out of the rents of the houses on First street.

I constitute and appoint my daughter, Julia Richardson, with such person as she may approve, executors of this my last will and testament.

Furniture and all other articles to be divided, on my decease, between my wife and daughter, Julia Richardson, and, as before mentioned, for her own use and control.

DAVID LOGAN. [SEAL.]

Signed and acknowledged, this 27th March, 1830, in the presence of—

PETER MOWRY,
ALEX. JOHNSTON, Jr.

I hereby make the following codicil to my last will and testament, viz:

In order to prevent any difficulty in the division of the furniture, or money on hand in bank, or that may be collected, I give to my daughter, Julia Richardson, the bed, bedstead and furniture thereof, now in the room I occupy; also, the sideboard in the back room, the books, book-case and bureau, looking-glass and two tables in the front room; my gold watch and the three-fourths of all the moneys in bank, or that may be collected, belonging to me. The other fourth to be divided between my wife and son, Joshua Lo-

gan, hoping they will make good use thereof. All and every bequest to my daughter, Julia Richardson, is for her sole use and control, independent of her husband. I wish and recommend that the water loan left to Jane Richardson may be given her at her marriage; and the five shares left Julia Logan to be put in security until she is of age, as my daughter, and the person she may choose to assist her in the regulation of these my affairs, may approve.

The thirty dollars mentioned in my will to James Caughey I revoke and annul, he having left me in an ungrateful manner.

Pittsburg, 5th Oct., 1830.

DAVID LOGAN. [SEAL.]

Witness: JOHN RICHARDSON.

And afterwards, to wit, on the fifth day of September, A. D. 1855, the defendant Sabina Logan, by her counsel, comes and files the following disclaimer, and the other defendants, by their counsel, come and file the following answers:

Copy of Disclaimer of Sabina Logan.

UNITED STATES OF AMERICA,
Western District of Penn'a, ss.

HUMPHREY H. LEAVITT, a citizen of the State of Ohio,
vs.
PHILLIP L. GRIM, adm'r of Joshua Logan, deceased, Sabina Logan, John R. Blaine and Julia, his wife, Thomas Allison and Emily, his wife, Louisa Logan, and David Logan, and Henry Logan, children of said Joshua Logan, dec'd, and Wm. D. Johnston, guardian of David and Henry Logan, and the Pittsburg Building and Loan Association, citizens of the State of Penn'a. } Bill in Chancery.

The disclaimer of Sabina Logan, widow of Joshua Logan, dec'd, one of the above defendants to the bill of complaint of Humphrey H. Leavitt, complainant.

This defendant, reserving to herself all right of exception to the said bill of complaint, for answer thereto, saith: That she doth not know that she, to her knowledge and belief, ever had, nor did she ever claim or pretend to have, nor doth she now claim or pretend to have, any right, title, interest, or estate of, in, or to the estates or premises situate, lying, and being in the city of Pittsburg, in said State of Penn'a, on the corner of Ferry and Water streets, in said city, being lots numbered in the general plan of said city 128 and part of lot No. 157, as described in said complainant's bill of complaint, nor to any or every part or parcel thereof: all which mat-

ters and things this defendant is ready and willing to aver and maintain, and humbly prays to be hence dismissed, with her reasonable costs, in this behalf most wrongfully sustained.

COURTNEY & LESLIE,
Sol's for Sabina Logan.

Copy of the Answers of John R. Blain and Julia, his wife, Thomas Allison and Emily, his wife, Louisa Logan, David Logan, and Henry Logan, the said David and Henry being minors, by their guardian, William D. Johnston.

In the Circuit Court of the United States for the Western District of Pennsylvania.

UNITED STATES OF AMERICA,
Western District of Penn'a, ss.

HUMPHREY H. LEAVITT, a citizen of the State of Ohio,
vs.
PHILIP L. GRIM, adm'r of Joshua Logan, deceased, Sabina Logan, John R. Blaine and Julia, his wife, Thomas Allison and Emily, his wife, Louisa Logan, David Logan, and Henry Logan, children of Joshua Logan, and William D. Johnston, guardian of the said David and Henry Logan. } Bill in Chancery.

To the Honorable the Judges of the Circuit Court of the United States for the western district of Penn'a:

The joint and several answers of John R. Blaine and Julia S., his wife, Thomas Allison and Emily, his wife, Louisa Logan, David Logan, and Henry Logan, the said David and Henry being minors, by their guardian, William D. Johnston, citizens of Beaver county, Penn'a, to the bill of complaint of Humphrey H. Leavitt, a citizen of Ohio.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exceptions which can or may be taken to the many errors, uncertainties, and other imperfections in said complainants' bill of complaint contained, for answer thereto, or unto so much as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, joint and severally answering, say:

I. That they are informed, and believe it to be true, that Joshua Logan, their father, did apply to complainant, at Steubenville, Jefferson county, Ohio, for a loan of three thousand dollars, to be secured by a mortgage on the premises described in the complainants' bill of complaint, as charged in said bill; but as to whether he represented himself to be seized thereof in fee simple, these defendants cannot say.

II. And these defendants, further answering, say: That they are likewise informed, and believe it to be true, that complainant did then and there loan and advance to the said Joshua Logan the said sum of three thousand dollars, at the rate of ten per cent. per annum interest, and took his promissory note therefor, as described in the mortgage mentioned in said bill, as charged in said bill of complaint.

III. And these defendants, further answering, say: That they are likewise informed, and believe it to be true, that to secure the payment of the said sum of money so loaned and advanced, the said Joshua then and there made, executed and acknowledged unto complainant a deed of mortgage upon the premises described in said bill, as charged in said bill.

IV. And these defendants, further answering, say: That it is true, that while the said sum of money remained unpaid, the said Joshua Logan died intestate, leaving as his widow Sabina Logan, of Beaver county, Penn'a, and as his children and heirs-at-law, Julia S., intermarried with John R. Blaine, Emily, intermarried with Thomas Allison, Louisa, Logan, David Logan and Henry Logan, all of Beaver county, Penn'a, the said David and Henry Logan being minors, and for whom Wm. D. Johnston is guardian. But it is not true that the said Louisa Logan is now, or was at the death of the said Joshua, a minor, as charged in said bill.

V. And these defendants, further answering, say: That they are informed, and believe it also to be true, that the said sum of money specified in said mortgage is due and unpaid, and the conditions of said mortgage not forfeited, as alleged in said bill, but broken.

VI. And these defendants, further answering, say: That it is true, that although the said sum of money in said mortgage specified, and intended to be secured thereby, has long since become due and payable; and although the said complainant has often requested these defendants to pay the same, yet they have hitherto wholly refused, and still do refuse to pay the same, or any part thereof; and it is also true that these defendants do pretend, and give out in speeches, that the said Joshua Logan was not seized in fee simple of said lands and premises described in said mortgage, or any part thereof, but had only a life estate therein, and that upon his death all estate, right, title, claim and interest of said complainant under and by virtue of said mortgage ceased and terminated, and that the title and fee simple estate in and to said premises is now vested in the children of the said Joshua Logan, deceased, free, clear, and discharged of all incumbrances of said mortgage, and that they are in nowise bound to redeem said mortgage or pay the said debt to the complainant; because they say, that in and by the last will and testament of David Logan, late of Allegheny county, Penn'a, deceased, father of the said Joshua Logan, and grandfather of the said Julia S., Emily, Louisa, David and Henry,

dated the 27th day of March, A. D. 1830, duly probated and registered in the register's office in said county, in will book, vol. , page , on the day of , A. D. 1831, a copy of which will is herewith filed and made part of this answer, and marked "A," it was willed and devised inter alia as follows, viz:

"I devise to my wife, Julia Logan, for her maintenance and support, the house and lot at the corner of Ferry and Water streets, bought of Mr. Findlay, during her life, and at her death to become the property of Joshua Logan; the said property not to be subject to sale or mortgage, but to descend to his children free and unincumbered. But in case he has no children living at his death, then and in that case to become the property of my daughter, Julia Richardson, in fee simple, or of her heirs in case she be not then living."

That at the date of said will, and at the death of said testator, David Logan, there were then born two of said Joshua's children, namely, the said Julia S. and Emily, and that afterwards the other three children, namely, the said Louisa, David and Henry, were born. That the said testator, David Logan, in said will devised the following estates:

1st. A life estate in said premises to Julia Logan, his widow, who, upon his death, took and enjoyed it during her life.

2d. A life estate in said premises to Joshua Logan, who, at the death of his mother, the widow, took and enjoyed it during his life.

3d. A fee simple estate in the said premises to the said children of Joshua Logan, which, at the death of the said testator, vested in the two children then born, which afterwards opened, divested, and let in the other three children, as they were successively born; their right to the usufruct and possession of the said premises being, of course, postponed until the termination of the two foregoing life estates.

4th. A contingent remainder in Julia Richardson, the only sister of the said Joshua.

That by the very terms and plain intent and meaning of the said devisee, Joshua Logan took only a life estate in said premises, which at his death ceased and determined, and that the ownership thereof in fee simple was, and now is, together with the possession and the right thereto in the said Julia S., Emily, Louisa, David and Henry; that the premises are the same as those described in said mortgage, and that the said mortgage-deed is no lien or incumbrance on the same.

VII. And these defendants, further answering, say: That they are likewise informed, and believe it to be true, that the Pittsburg Building and Loan Association have, or claim to have, some estate, right, title, interest in, or incumbrance upon, the premises described in said mortgage by a junior mortgage for one thousand

dollars, dated the 10th day of July, A. D. 1854, and by means thereof claim to have an equity of redemption in said premises.

And these defendants, further answering to the several interrogatories of complainant, whereto they are required specially to answer, say:

To the 1st interrogatory they say, that the said Joshua Logan was on the fifteenth day of December, 1853, in possession of the premises described in said mortgage.

To the second interrogatory they say, that they are informed and believe that said Joshua Logan did make, execute and deliver to complainant the mortgage-deed described in said bill, and that the copy filed with the said bill is a true copy.

To the third interrogatory they say, that they are informed and believe that the debt specified in said mortgage is due and unpaid.

To the fourth interrogatory they say, that the persons named in said bill as such are the administrator, widow, children and heirs-at-law of Joshua Logan, deceased.

To the fifth interrogatory they say, that the interest, title, or estate the said Joshua Logan had in the premises described in said mortgage was a life estate, which terminated at his death, and that the estate these defendants have therein is a fee simple estate, as tenants in common.

In consideration whereof, these defendants jointly and severally deny the right of the said complainant to have the equity of redemption in said mortgaged premises foreclosed, and the premises sold and conveyed in fee simple by order of the court, to pay, satisfy, and secure the mortgage debt due complainant.

All which matters and things these defendants are ready and willing to now maintain and prove as this honorable court shall direct, and humbly pray to be hence discharged, with their reasonable costs and charges in this behalf most wrongfully sustained.

COURTNEY & LESLIE, & THOMAS WILLIAMS,
Sol's for above named Def'ts.

STATE OF PENN'A,
City of Pittsburg, ss.

On the 21st day of August, 1855, before me, an alderman in and for the city of Pittsburg, personally came Julia S. Blaine, one of the above defendants, who, being by me duly sworn, saith that the facts set forth in the foregoing answer are true and correct, to the best of her knowledge, information and belief.

JULIA P. BLAINE.

Sworn and subscribed before me this 21st of August, 1855.

P. McKENNA,
Alderman.

Exhibit "A."

Copy of the Will of David Logan.

Being desirous that my affairs, after my decease, be regulated, I make this my last will and testament, hereby revoking and cancelling all former wills by me heretofore at any time made. After my funeral expenses and just debts are paid, I devise to my wife, Julia Logan, for her maintenance and support, the house and lot at the corner of Ferry and Water streets, bought of Mr. Findlay, during her life, and at her decease to become the property of Joshua Logan, the said property not to be subject to sale or mortgage, but to descend to his children free and unincumbered; but in case he has no children living at his death, then and in that case to become the property of my daughter, Julia Richardson, in fee simple, or of her heirs in case she be not then living. I devise to my daughter, Julia Richardson, the three houses on First street and the two houses and office on Water street, and lot formerly belonging to Joseph H. Chapin and Harriett, his wife, for her sole and separate use, not subject to the control of any husband she may have, but at her decease to descend in fee simple to such of her children as she may direct, in a writing signed by herself; the said property not to be subject to sale or mortgage during her life. I give to my granddaughter, Julia Logan, five shares of one hundred dollars each in the water loan of Pittsburg, the said shares to remain as at present; but if paid, the amount to be placed in bank until she is of age. I give to my granddaughter, Jane Richardson, also five shares in the said water loan; and to my daughter, Julia Richardson, I give also five shares in said water loan, for her sole and separate use, to be disposed of as she may think proper. I give unto my son, Joshua Logan, the lot in Burksville, Kentucky, to hold in fee simple. I devise that any money that I may have at my decease, in banks, and debts, when collected, may be divided equally between my wife, Julia Logan, and daughter, Julia Richardson, but, as before mentioned, for Julia Richardson's own use and control. I give to James Caughey thirty dollars per year, for and during his life, to be paid out of the rents of the houses on First street. I constitute and appoint my daughter, Julia Richardson, with such person as she may approve, executors of this my last will and testament. Furniture and all other articles to be divided, on my decease, between my wife and daughter, Julia Richardson, and, as before mentioned, for her own use and control.

DAVID LOGAN. [SEAL.]

Signed and acknowledged this 27th March, 1830, in presence of—

PETER MOWRY,

ALEX. JOHNSTON, JR.

[REC. CXXIX, D. T., 1858.]—3

I hereby make the following codicil to my last will and testament, viz: In order to prevent any difficulty in the division of the furniture or money on hand, in bank, or that may be collected, I give to my daughter, Julia Richardson, the bed, bedstead, and furniture thereof, now in the room I occupy; also the sideboard in the back room, the books, bookcase and bureau, looking-glass and two tables in the front room, my gold watch, and the three-fourths of all moneys in bank, or that may be collected, belonging to me; the other fourth to be divided between my wife and son, Joshua Logan, hoping they will make good use thereof. All and every bequest to my daughter Julia Richardson is for her sole use and control, independent of her husband. I wish and recommend that the water loan left to Jane Richardson may be given her at her marriage; and the five shares left Julia Logan to be put in security until she is of age, as my daughter and the person she may choose to assist her in the regulation of these my affairs may approve. The thirty dollars mentioned in my will to James Caughey I revoke and annul, he having left me in an ungrateful manner.

DAVID LOGAN. [SEAL.]

Pittsburg, 5th Oct., 1830.

Witness: JOHN RICHARDSON.

And afterwards, to wit, on the 17th day of November, A. D. 1855, the complainants, by their counsel, come and file the following replication:

Copy of Replication.

HUMPHREY H. LEAVITT }
vs. }
PHILIP L. GRIM et al. }

The Replication of Humphrey H. Leavitt, complainant, to the Answer of the defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith: That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and prays, as in and by his said bill he hath already prayed.

C. SHALER & CO.,
WM. BAKEWELL,
Solicitors for Complainant.

In the Circuit Court of the United States for the western district of Pennsylvania.

No. 2 of November Term, 1855.

HUMPHREY H. LEAVITT, a citizen of the State of Ohio, vs. PHILIP L. GRIM, administrator of Joshua Logan, deceased, Sabina Logan, John R. Blaine and Julia his wife, Thos. Allison and Emily his wife, Louisa Logan and David and Henry Logan, children of said Joshua Logan, dec'd, and Wm. D. Johnston, guardian of David and Henry Logan, and the Pittsburg Building and Loan Association, citizens of the State of Pennsylvania.	In Chancery.

And now, to wit, November 17th, 1856, this cause having been submitted upon bill, answers and replication, the following opinion was delivered by the court at May sessions, 1857, and ordered to be filed nunc pro tunc.

Opinion of the Court.

In C. C. U. S., W. D. of Pa.

HUMPHREY H. LEAVITT vs. PHILIP L. GRIM et al.

In Chancery.—On Bill and Answer.

The only question presented in this case arises on the construction of a devise in *in* the will of David Logan, deceased. It is as follows:

"I devise to my wife, Julia Logan, for her maintenance and support, the house and lot at the corner of Ferry streets, &c., during her life, and at her decease to become the property of Joshua Logan; the said property not to be subject to sale or mortgage, but to descend to his children, free and unincumbered; but in case he has no children living at his death, then and in that case to become the property of my daughter, Julia Richardson, in fee simple, or of her heirs in case she be not then living."

What estate did Joshua Logan take in the premises?

If the will had made no further provision than that, after the decease of Julia Logan, the premises should "become the property of Joshua Logan," it might well be construed as a gift of the remainder in fee to Joshua. But such an intention is manifestly inconsistent with the provision that the property, while in his hands,